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10 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**
12

13 In the Matter of the Statement of Issues
14 Against:

15 **CAN THANH DOAN**

16 **Registered Nurse License Applicant**

17 Respondent.
18

Case No. *2013-477*

STATEMENT OF ISSUES

19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
22 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
23 Consumer Affairs.

24 2. On or about February 17, 2012, the Board of Registered Nursing, Department of
25 Consumer Affairs received an application for a registered nurse license from Can Thanh Doan
26 (Respondent). On or about December 30, 2011, Respondent certified under penalty of perjury to
27 the truthfulness of all statements, answers, and representations in the application. The Board
28 denied the application on April 30, 2012.

JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

1 (3)(A) Done any act that if done by a licentiate of the business or profession
2 in question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if the
4 crime or act is substantially related to the qualifications, functions, or duties of the
5 business or profession for which application is made.

6 7. Section 482 of the Code states:

7 Each board under the provisions of this code shall develop criteria to evaluate
8 the rehabilitation of a person when:

9 (a) Considering the denial of a license by the board under Section 480; or

10 (b) Considering suspension or revocation of a license under Section 490.

11 Each board shall take into account all competent evidence of rehabilitation
12 furnished by the applicant or licensee.

13 8. Section 493 of the Code states:

14 Notwithstanding any other provision of law, in a proceeding conducted by a
15 board within the department pursuant to law to deny an application for a license or to
16 suspend or revoke a license or otherwise take disciplinary action against a person who
17 holds a license, upon the ground that the applicant or the licensee has been convicted
18 of a crime substantially related to the qualifications, functions, and duties of the
19 licensee in question, the record of conviction of the crime shall be conclusive
20 evidence of the fact that the conviction occurred, but only of that fact, and the board
21 may inquire into the circumstances surrounding the commission of the crime in order
22 to fix the degree of discipline or to determine if the conviction is substantially related
23 to the qualifications, functions, and duties of the licensee in question.

24 As used in this section, "license" includes "certificate," "permit," "authority,"
25 and "registration."

26 9. Section 2761 of the Code states:

27 The board may take disciplinary action against a certified or licensed nurse or
28 deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the
following:

....

(f) Conviction of a felony or of any offense substantially related to the
qualifications, functions, and duties of a registered nurse, in which event the record of
the conviction shall be conclusive evidence thereof.

....

10. Section 2765 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article. The board may order the license or certificate suspended or revoked, or may decline to issue a license or certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1444 states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

12. California Code of Regulations, title 16, section 1445 states:

(a) When considering the denial of a license under Section 480 of the code, the board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

....

1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(June 6, 2006, Criminal Conviction for Grand Theft on January 6, 2006)**

3 13. Respondent license application is subject to denial under Code sections 480 and 2761,
4 subdivision (f), in that he was convicted of a crime that is substantially related to the
5 qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

6 a. On or about June 8, 2006, in a criminal proceeding entitled *People of the State*
7 *of California v. Can Thanh Doan*, in Orange County Superior Court, case number 06HM00663
8 MA, Respondent was convicted on his plea of guilty of violating Penal Code section 487(a),
9 grand theft, a misdemeanor. An additional count of violating Penal Code section 459-460(b),
10 burglary, was dismissed pursuant to a plea agreement.

11 b. As a result of the conviction, on or about June 6, 2006, Respondent was
12 sentenced to two years informal probation and ordered to serve thirty days in Orange County Jail.
13 Respondent was further ordered to pay fees, fines and restitution, and to stay away from Macy's
14 department store in Costa Mesa. At a hearing on or about April 29, 2008, the court granted
15 Respondent's petition for relief under Penal Code sections 1203.4/1203.4a: Respondent was
16 allowed to withdraw his plea of guilty and enter a plea of not guilty; and, the Court dismissed the
17 case pursuant to Penal Code section 1203.4.

18 c. The facts that led to the conviction are that during unknown dates in 2006
19 Respondent was employed as a sales associate at Macy's department store in Costa Mesa.
20 Respondent quit working at Macy's on or about December 5, 2006. Soon after Respondent
21 stopped working at Macy's, he purchased an Omega brand watch for \$3,981 using his Macy's
22 credit card. On January 6, 2006, Respondent entered the Macy's department store in Costa Mesa,
23 electronically accessed a Macy's cash register by entering a cash register access code that
24 belonged to a current Macy's employee¹, without the employee's permission, entered false
25 information into the cash register which generated a fraudulent refund transaction for the Omega

26 ¹ Respondent admitted that while he was employed at Macy's, he covertly learned a
27 co-employee's access code to the Macy's cash registers by secretly watching the co-employee
28 enter their access code into a Macy's cash register, and then memorizing that co-employee's
access code.

1 watch that Respondent had previously purchased and credited the Omega watch's \$3981 purchase
2 price back onto Respondent's Macy's credit card. Respondent then signed the cash register's
3 digital card keypad and completed the refund transaction, took the cash register receipt and exited
4 the store but, did not return the Omega watch or any other merchandise to Macy's inventory.

5 **SECOND CAUSE FOR DENIAL OF APPLICATION**

6 **(Acts Involving Dishonesty, Fraud, or Deceit)**

7 14. Respondent's application is subject to denial under Code section 480, subdivision
8 (a)(2), in that Respondent committed acts involving dishonesty, fraud or deceit with the intent to
9 substantially benefit himself. The circumstances are set forth, above, in paragraph 13 which is
10 incorporated herein by reference.

11 **THIRD CAUSE FOR DENIAL OF APPLICATION**

12 **(Acts Which if Done by Licentiate Would be Grounds for Suspension or Revocation)**

13 15. Respondent's application is subject to denial under Code section 480, subdivision
14 (a)(3), in that Respondent committed acts which constituted unprofessional conduct within the
15 meaning of Code section 2761, subdivision (a), and which, if done by a licensed registered nurse,
16 would be grounds for suspension or revocation of the registered nurse license. The circumstances
17 are set forth, above, in paragraph 13 which is incorporated herein by reference.

18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
20 and that following the hearing, the Board of Registered Nursing issue a decision:

- 21 1. Denying the application of Can Thanh Doan for a registered nurse license;
22 2. Taking such other and further action as deemed necessary and proper.

23 DATED: December 11, 2012 Louise R. Bailey
24 LOUISE R. BAILEY, M.Ed., RN
25 Executive Officer
26 Board of Registered Nursing
27 Department of Consumer Affairs
28 State of California
Complainant

SD2012703947